

PUBLIC ACCESS, OPEN SPACE & NATURAL RESOURCES
PRESERVATION FUND COMMISSION

REGULAR MINUTES

March 12, 2015

The regular meeting of the Public Access, Open Space & Natural Resources Preservation Fund Commission of the County of Kauai was held at the Lihue Civic Center, Moikeha Building, Meeting Room 2A/2B. The following Commissioners were present:

Patrick Gegen, Chairperson
Randall Blake
Theodore Blake
Linda Dela Cruz
Dorothea Hayashi

Absent and excused:
Joseph Figaroa, Vice Chair
Shaylyn Kimura
Karen Ono
(1 Vacancy)

The following Staff members were present: Planning Department Staff Nani Sadora and Duke Nakamatsu; Deputy County Attorney Ian Jung.

CALL TO ORDER

Chair Gegen called the meeting to order at 1:10 p.m. with five commissioners present constituting a quorum.

APPROVAL OF AGENDA

Ms. Hayashi requested taking new business regarding the presentation by the Kauai Watershed Council first.

ANNOUNCEMENTS

Ms. Sadora congratulated Chair Gegen for being elected Chairperson and Mr. Figaroa as Vice Chair.

RECEIPT OF ITEMS FOR THE RECORD

There were no items for the record.

NEW BUSINESS

Presentation by Kauai Watershed Council, Kona Moku, on Salt Pond.

Rhoda Libre stated that the Kauai Westside Watershed Council was established in 1999 but started serving the County through educational media after the hurricane in 1992. They had continuity for over a hundred years with over 50 natural cultural gatherers from the perimeter of Waimea River to Hanapepe, and recently extended to Lawai Kai. She is the coordinator of the Watershed Council, but she noted the konohiki of the Kona Moku of Salt Pond were present and she relinquished her time to them.

The Commission received testimony from Wilma Holi. She descends from the Kali family on her maternal side. She questioned what people are talking about and where they are looking at Salt Pond. She represents her family to protect their interest in that area.

Chair Gegen stated that the last time Ms. Libre was here they understood there were ongoing discussions with the County and the Commission said they would take a back seat until there was some way they could offer their support.

Ms. Sadora added that this agenda item was requested by the Watershed Council. Initially there were several items on the agenda; one was a buffer for the beach park, and another was to address the cars driving and parking near Puolu Point. These were community concerns asking what the Commission could do. The Commission decided to hold off until there was a presentation by the families of that area. There were things happening and the Commission did didn't want to delay or stop any progress that might have already been happening. The buffer was regarding the State lands mauka of the park. They wanted to see what could be done to stop any kind of run off that comes into the salt pans. Initially the recommendation was to do a park expansion and buffer zone. With community input they weren't concerned about a park expansion, they wanted to protect the salt pans. There hasn't been activity from the Commission since last year, until they could hear more from the immediate families to see if there was anything more they were requesting from the Commission.

Ms. Holi stated there was a community meeting several years ago at the beach park and there was discussion about the salt pan area. There are two groups involved with the salt pans. One has legal standing and the other does not. The more vocal group is the group that does not have legal standing. Her concern is that the Commission is hearing from the group that has no standing in that area. Her maternal grandfather was the last konohiki for that area. Since none of her aunts and uncles are stepping up to the plate, it is her responsibility. They have had meetings with the Mayor and disclosed their standing. As far as she is concerned, the Commission should not be talking about it because they have no kuleana there. People need to do their homework and due diligence. The State did their due diligence and found there are

private owners. They had to step back. There are certain areas that they cannot have jurisdiction. She wanted to make it very clear where they are all coming from.

Chair Gegen stated that the Commission has a responsibility when the community asks them to look at areas that can be for open space, such as mauka of the park. Their responsibility is to look at it, but understanding there were discussions going on with the Mayor especially regarding the salt pan area, they had no intention of doing anything that would impact it other than making sure the area mauka and uphill would not be contributing to additional dirt or runoff. Ms. Libre informed the Commission that there were ongoing discussions, so the Commission stood back.

Ms. Holi stated that when it rains the salt pans get all the water from mauka. If it doesn't rain, there's no water. Mother Nature has a say and they can't make plans for it. They can't build a reservoir because that would create other problems too to which Chair Gegen stated that their concern was to make sure there wasn't agricultural activities occurring there that would loosen more soil and make dirtier run off. The Commission took that same stance as they did with Kaneioluma. They are waiting for direction on how they can assist that group to meet their needs.

Ms. Holi suggested that in the meantime somebody on staff do their due diligence and find information on title and who really has jurisdiction over the lands. They are the decision makers and stake holders. As far as she is concerned the Commission is the sideline observer.

Chair Gegen questioned her vision for the area to which Ms. Holi stated she sees a lot of abuse there and illegal camping. Park rangers are not enforcing the law. There are a lot of dogs. It would be good to monitor the campers and the people who bring their dogs. She noted that she cares for a colony of feral cats but someone has been killing the cats so now the mice are coming in to the park. She counts at least five mice coming from the fields each day. That park has grown very popular with tourists. When there are mice, it doesn't make a pretty picture. The County needs to take care of that. She has six cats and they are busy catching mice.

Chair Gegen noted that they will pass the information on to someone who can hopefully do something about the enforcement and the mice.

Ms. Holi recommended the book "Who Owns the Crown Lands of Hawaii". Decisions about that area should be made by the heirs of the crown. There is abuse down there. People treat it like a dog park and they don't clean up after themselves. There are tweekers in the bushes, people dump their garbage in the brush, people in their truck lifts climb over the boulders, and Hawaiians that plant their signs. When the time is right she is going to put up a gate and lock everyone out so that her family can enjoy their property.

Ms. Libre stated that the Kauai Westside Watershed Council has a task force of ten and they are very specific cultural gatherers. They have been working with the invasive species committees, the County, and the State. The area has been inundated and turned into a garbage scow with all illegal activities, visitors and locals from outside the ahupuaa. The State is slow and now they are working with the new administration. They found that DOBOR has been

writing permits to allow commercial operators to come into the area, but they have been chasing them out because it is a very sacred area and historical fisheries which connect to the shoreline, the estuary, and the waterfalls. They are working with the Mayor to restore this last area which extends all the way to Kaumakani and Pakala. Illegal commercial vendors have desecrated Glass Beach and there is no limu on the reef. The coral reef is dead. William Aila instructed Kauai DOCARE to remove them and give new policies. She suggested that the Commission work with the konohiki and the makaaainana. They would like to stay in collaboration with the Commission.

Chair Gegen stated that there is anything the Commission can do to assist they will, otherwise there isn't any real ambitions to go in and do anything at this point.

Ms. Libre stated that she read something about subdividing in the last literature which pulled up a big red flag to which Ms. Sadora replied there was never any intention by the Commission to do anything with regards to subdivision. For the mauka parcel, it was always the intent that it would remain open space.

Ms. Hayashi asked for clarification that the Commission makes recommendations based on public input and after that the planning is out of their hands to which Ms. Sadora replied that outside of the recommendation, the Commission wants to have some kind of plan so that there can be movement. Any development or plans comes from whoever will be responsible to care for the area. She noted Black Pot is now being managed by Parks and Recreation.

Chair Gegen noted that prior to his time on the Commission, they were originally looking at park expansion. In his time, they have gone from looking at park expansion to just purchasing property to keep as open space or a buffer. The suggestion was to wait and see what was happening with other discussions and they have been in a holding pattern. He imagines they will stay in that holding pattern until something else comes up.

The Commission received testimony from Belle Kaiwi. She expressed concern regarding the kuleana properties in the Salt Pond area and she felt there should be some kind of preservation in that area. There is a fish pond named Kuni Kaiawe across from the Salt Pond area that belonged to her mother's father. When she was growing up, water used to go in there and there was a home on Puolu Point where her tutu was born and raised. In 1959 when it became a State they tore the house down and made a bon fire. There are two kuleana lands. One where people are swimming with their babies. The other portion is the lighthouse area and the runway is on it. She wants to preserve this area and she doesn't like seeing vehicles driving on the sand all that way back digging up all the sand and bringing the red dirt into the sand. She was baptized in that area. She doesn't mind kids swimming but she doesn't like when they kapulu the area.

Chair Gegen noted that concern was brought up and unfortunately it's the Department of Transportation who controls that area.

Ms. Hayashi questioned the wording on the recommendation: continue discussion on Salt Pond Beach Park expansion mauka and west and whether a buffer area for protection of Hanapepe salt pans could be acquired.

Ms. Kaiwi questioned if they want to acquire property to build a buffer to which Ms. Hayashi replied that a buffer not to build anything, just to leave it open.

Ms. Kaiwi stated that she didn't find a problem with the wording. She told her family that if they don't want to do anything with the property, maybe they should turn it over to historic preservation and just close off the area, then nobody can go in and trample all over the place.

Ms. Libre added that she concurred with Ms. Kaiwi. She met with DOT heads and they took a walk in the area. She finds them quite indifferent. They cleaned the area and they put more sand. DOT knows it's not their kuleana but they are unwilling to collaborate with the konohiki. DOCARE and the police cannot be there all the time. Only the konohiki and makaainana are there all the time. It would be advantageous to support their efforts and continue. She spoke with SHPD, but not all the information is given. They are waiting to work with the Ige administration to minimize the negative impact. Tours, divers, paddle boards, and wind surfers are starting to go there.

Ms. Hayashi asked Ms. Libre about the language of the agenda item: continue discussion on Salt Pond Beach Park expansion mauka and west and whether a buffer area for protection of Hanapepe Salt pans to which Ms. Libre stated it needs to be more comprehensive as to which parcel they are talking about.

Ms. Holi stated that the Commission needs to do due diligence. She noted those lands do not belong to the Robinsons either. There are owners of the crown lands. They need to talk to the owners of the crown. This is not a County matter. Kingdom law and Kingdom property doesn't belong to lawful government people and it doesn't belong to Atooi. There are heirs to the crown. She told the Commission not to go looking at property that they don't own and the State doesn't own.

Chair Gegen stated that the intent from their view point is that the State is saying that they own the property. The Commission is concerned that if it stays like that, the State could do something else that they would have no jurisdiction over. If the property were purchased, legal or illegal, from the State and were put in the hands of the County, the Commission feels it would be much easier to do the things that people feel would be right. Right now, understanding the frustration of the government, and working with the Ige group, there is no continuity. If the new DLNR decides to develop, the County has little control over that. The Commission is looking to get more local control. He is not going to argue whether it is owned by the County, the State or crown lands. All he knows is the way it is today, they have little jurisdiction to maintain a buffer there. He understands the legal claims, but the Commission can only look at property and ensure that it stays in open space. He did not feel they were at odds by any means and they are not there to debate the rightful owner.

Ms. Holi stated that at a meeting she and her sister had with the Mayor, they told the Mayor that the lawn size at Salt Pond has reached its capacity. There's a parking area outside the park, and by the salt pans. People have been parking along the shoulder. The bottom line is the size of the park and the size of the parking has reached its capacity. West of the parking area are a lot of historical and cultural sites. The State did their due diligence and found there are private property owners in the ocean front. The Commission needs to do their due diligence to which Chair Gegen replied their lawyers will do the due diligence and identify that information, but at this point, they aren't looking at doing anything without direction. If they did do anything it would just be to enhance the capabilities of the groups who have control there.

Mr. T. Blake asked if Ms. Libre considered starting a makai watch to which Ms. Libre replied they opted not to do makai watch. She asked the kupuna and they will not go under the State. They have already been doing self-governing all these years. She found some problems with the makai watch. There are so many designations in the DLNR and sometimes they don't talk to each other.

Mr. T. Blake stated that under makai watch they are trained by DOCARE, they collect information that is recorded, and it is the easiest way to get that information into the State and they don't get questioned about it because they are doing it by their means. The main thing is to have the information.

Ms. Libre stated that she is on the Marine and Coastal Zone Management advisory and there were a few caveats. She is trained for the same biological testing and data gathering and disseminating the information. She has given makai watch all of the information. It wasn't her call. For her, personally, it would be easier to work under makai watch, but she cannot do any decision making, she is just the coordinator. Cultural protocol are the laws of nature that are already instilled. She stated that the word "acquire" is kind of spooky, but she understands what Chair Gegen stated about not being able to control it if it is in the State jurisdiction

Ms. Hayashi stated that their only concern is that area they are trying to acquire for open space. She cannot understand why they cannot communicate on that. If they ignore it, it may be given to something else to which Ms. Libre stated she has seen that happen many times. She has also seen the County sell off remnants. That's the caveat that the kupuna are leery of. She suggested a stewardship agreement or lease of 99 years.

Ms. Hayashi noted this is a continuing discussion to which Ms. Libre noted that "acquire" can mean to purchase or to encumber and manage. She felt it needed to be more succinct to make them a little more comfortable.

Ms. Hayashi stated that they even had problems with the word "buffer" to which Ms. Libre replied that the word "buffer" and "conservation zone" and "greenway" and "spillway" are all within the same thing, but are quite succinct.

Ms. Hayashi stated that she wanted to make sure they were comfortable with that word to which Ms. Libre replied that until they can find a better word that will be suitable. She believed that they all have a common goal; the integrity.

Ms. Hayashi noted that area has always been threatened with all kinds of development. She is also concerned as a west sider because of what could come up in that area.

Ms. Libre stated that Syngenta has fired a lot of our people and they want to use that area to retrain and recertify and give our people new hope. They would like to reforest the area. She thinks a stewardship agreement would be a good start.

UNFINISHED BUSINESS

Update on recommendation to County Council for condemnation resolution for a portion of TMK (4) 2-6-003:017 to obtain a pedestrian public beach access easement to Kukuiula Bay through the former Hoban property and discussion on alternative pedestrian public beach access options to Kukuiula Bay.

Ms. Sadora noted that there was no update since the last meeting and it is still with the administration.

Ms. Higuchi-Sayegusa noted there was no update from Ian Jung.

Discussion on request by Malama Koloa to consider purchasing a 4.860-acre archaeological parcel in Poipu located at TMK: (4) 2-8-031-199.

Mr. T. Blake stated that to his knowledge the Deputy County Attorney and staff was preparing acquisition documents.

Ms. Sadora questioned if the Commission wants to go forward with this recommendation.

Mr. T. Blake stated that his is involved in Malama Koloa. They had this idea five years ago when he and Hal Hammond finished the Hapa Trail walk and Mr. Hammond noted this was the last preserve of the five at Kiahuna. At that time he stated if they get ahold of it, he would be a 50% financial partner and turn over their research. He asked the County Attorney if he needed to recuse himself from this project and he was told it wasn't a problem as long as presentation would be done by Hal Hammond. He questioned if the agenda item being listed as a request from Malama Pono was a problem since he is the executive director.

Ms. Sadora noted that was the way it was initially presented as an agenda item but it can be amended. She thinks that prior to the field trip they said they were going to do an acquisition plan, but the Commission was going to decide how they were going to move on any of the items during the field trip. She questioned if the Commission wants to move forward with the acquisition plan.

Mr. R. Blake suggested that Mr. T. Blake may want to recuse himself from the voting. He suggested that since they only have a minimum quorum today, they may want to defer until

more members are present.

Ms. Higuchi-Sayegusa noted that they want to avoid the appearance of conflict, so in the abundance of caution it may be best to defer to which Mr. T. Blake agreed.

Chair Gegen noted that if they ask for an acquisition plan, it would still come to a vote whether or not they want to make a recommendation.

Mr. T. Blake stated that it would be easiest to recuse himself.

Chair Gegen deferred the agenda item to the next meeting. It is his personal thought that it is an interesting property and he would hate to see anything happen to it and not be preserved.

Update on vacant commissioner position.

Ms. Sadora noted that due to the traffic situation today, the newly appointed commissioner was not able to make it from the east side. As for the remaining vacancy, there is still no replacement.

Mr. T. Blake questioned the name of the new commissioner to which Ms. Sadora replied Shaylyn Kimura.

Chair Gegen questioned the whether the remaining vacancy is a Council or Mayor appointee to which Ms. Sadora replied it is the Council at-large position.

Review and discussion on past recommendations and prioritization of the Commission's work plan/timeline of events and activities including spreadsheet of Commission's task list.

Ms. Sadora noted the spreadsheet has not been updated since January. The only addition would be for the Evslin parcel with Mr. R. Blake's task of meeting with the Parks Director.

Chair Gegen questioned number 11, the letter to OHA to which Ms. Sadora noted it may have been regarding Salt Pond.

Chair Gegen questioned the status of the Somers project to which Ms. Sadora noted they are scheduled before the Planning Commission. Staff Planner Jody Galinato will report back to the Commission on any updates with the P1 easement and the Quarry Road. Michael Mitchell replaced Shannon Smith. She is in discussion with him regarding the construction of the road.

Mr. T. Blake questioned the proposed times for access through the road to which Ms. Sadora noted it's just the planning stage; anglers would have 24 hour access, but everybody else would be 6:00 a.m. to 5:00 p.m.

Mr. T. Blake stated that the most important part of the 24 hours to Hawaiians is at night.

He noted that surfing is not recreational, it's cultural. If the tide is coming up at 5:00 p.m. the waves are better at 6:00 p.m. He also likes to pick limu. If the tide is low at 6:00 p.m. he is not going to go there at 3:00 p.m. He felt this process is backwards. They're on third base and now asking for comments.

Ms. Sadora pointed out the Kilauea Neighborhood Association had stated they would be willing to negotiate a certain time to go there rather than have no access at all to which Mr. T. Blake noted that Ms. Kallai never did any cultural practices when she was young. They are closing it off to people that do cultural practices. It should have been on the table from the start and automatic. He feels they should have talked to the Open Space Commission first and then put out their proposals for rules.

Ms. Hayashi questioned if the Commission is allowed to go down that road to which Ms. Sadora advised that they keep the nine criteria in mind when they decide how to move to which Mr. R. Blake noted that culture is within the guidelines.

Chair Gegen stated that his concern is that they haven't gotten any responses from the letters they have sent. If it is coming back to the Planning Commission he was not sure if they should do something to make sure that before anything additional is done, the requirements to do P1 are completed to which Ms. Sadora noted there is ongoing dialog between her and the planner for that project.

Chair Gegen stated that if they are coming back for things, the three things the Commission is concerned about is the quality of the road, the P1 access that is supposed to be in place already, and access to the waterfall to which Ms. Sadora noted they are still on the table.

Chair Gegen suggested to not let them do anything until we get those three things to which Ms. Sadora stated that because it was referred to the Open Space Commission for review, they are involved in the process until the outcome is final.

Mr. T. Blake stated that his concern is that the comment period ends on March 27. By the time they get to do anything, they lost their chance to talk. He questioned if Fish and Wildlife owns the road to which Ms. Sadora stated that the part that goes to the beach is Fish and Wildlife.

On the motion by Theodore Blake and seconded by Randall Blake to send a letter to DLNR stating that the Open Space Commission would like to have the ability to comment regarding their concerns specifically in regards to cultural practices and access to the area, the motion carried by unanimous voice vote.

On the motion by Theodore Blake and seconded by Dorothea Hayashi to have the chair review the correspondence prior to sending, the motion carried by unanimous voice vote.

Review and discussion on CGB/Evslin properties further identified as Tax Map Key (4)

1-3-005:040, 053, and 054.

Mr. R. Blake stated that at the previous meeting he mentioned the possibility that this parcel should be acquired for a skate park. He met with the Director of Parks and Recreation, Lenny Rapozo, on Monday afternoon and discussed the concept of maybe having the State transfer the adjacent property over to the County also. He took it under advisement and discussed it with the Mayor. He liked the idea but didn't think it should be a high priority acquisition for the Commission at this time.

Ms. Hayashi questioned comments from the community to which Mr. T. Blake stated there is a letter of support from the West Hawaii Homestead Association. It hasn't been executed yet, but the letter is coming. Basically even if the State doesn't turn over the land, you have a five acre park for \$1 million. He feels that if you can buy beach front property for that price and get 5 acres, get on it.

Ms. Hayashi stated that her concern is that there was an archaeological survey.

Mr. R. Blake stated that that if the County acquired it, they could go before the Burial Commission to look at it. They could also restore the fishpond.

Mr. T. Blake stated that they found three iwi in proximity, but not on the parcel. The test digging didn't find anything. If they do find something, the Burial Council has protocol to follow. The three that were found were moved to the Hawaiian graveyard.

Ms. Sadora stated that an acquisition plan has been drawn up and is with the Deputy County Attorney. She can provide it at the next meeting.

Chair Gegen stated that they can look at the acquisition plan and make a decision at the next meeting.

Review and discussion on access to Lawai Kai beach.

Mr. T. Blake stated that he thinks there needs to be an access. There is access along the rocks next to the water, but if you go in at low tide and it gets to be high tide, you're not getting out. There are two land owners. Kukuiula owns all the land from Spouting Horn to the valley. They already have a sea side path that the Allertons used to use. The problem would be with NTGB. One way or another, the people go down. The guards used to tell people to use the rocks, but if people get hurt, they would get into trouble. At his age, he is not able to traverse the rocks, but he has seen 120 to 150 people at the beach and they all go down the same way. At some point in time it's a lawsuit waiting to happen. Something has to be done.

Mr. R. Blake noted that more tourists will show up if they make the access too easy.

Ms. Hayashi noted that they have to weigh it.

Mr. T. Blake stated that tourists show up at Kauai Coffee to get down there. They know exactly what to do. They read about it in the books.

Ms. Sadora asked the Commission what they want to do. It is still under NTBG's policy.

Mr. T. Blake stated that the access from Kauai Coffee is not really an access, they just never stop people except during harvesting.

Ms. Sadora stated that she will check the subzone as to what was approved, but that would be for the west end only. Outside of that, she did not know if there was anything that can be done about the illegal access that is being used.

Chair Gegen stated that they want to know what the special subzone says and also NTGB's plan to which Ms. Sadora stated that it sounded like they are trying to deter people from going there.

Mr. T. Blake stated that there was secondary information that they were considering a fence from the road all the way to the rocks to which Ms. Sadora stated that may happen.

Mr. T. Blake stated that the rocks are not private property so it would be a matter of going around the fence. He stated that we have to find a solution that is good to both sides. Somebody will get hurt.

Ms. Sadora noted that even with a solution, people will continue to do what is the easiest. Even if it is a legal access coming from the west side, people will continue use the illegal access.

Ms. Hayashi noted she likes the concept of Hanauma Bay to which Ms. Sadora noted that part of the special subzone allows for that. You can kayak in and boats can only come in one at a time. They want to allow access, but they don't want to make it too easy because of what they're trying to protect along the beaches.

Mr. R. Blake noted that it is not their beach to protect.

Mr. T. Blake stated that Allerton used to own from point to point. The State got the konohiki rights to the ocean. They tried to deter the boats from coming in because there were very few coral heads. People would need permits to land kayaks at the beach.

Ms. Hayashi recommended making it a sanctuary.

Ms. Sadora stated that she will provide the access conditions of the special subzone from the website.

Review and discussion on Kaha Kai Condominium parcel located at TMK: (4) 2-8-017:016.

Chair Gegen stated that it sounded like Rupert Rowe has already started some discussions and his recollection was that they may or may not be in favor of selling.

Mr. R. Blake requested the assessed value of the property so they have some idea of future budgetary allowance to which Ms. Sadora replied that Mr. Rowe's intent is to look at other means of funding as well. He is working with the Hawaii Islands Land Trust and Jennifer Luck may be used as the spokesperson for getting that started. Mr. Rowe will let the Commission know when there is further action to be taken.

Mr. T. Blake noted there are other parties interested in purchasing portions of that land for parking, and maybe the business itself. The restaurant was just purchased but they don't have parking. The west side is County and the east side is Knudsen.

Ms. Sadora stated that the Commission will move at whatever direction that is received from the Hui to which Chair Gegen stated that he would love to assist them in any way possible.

NEXT MEETING DATE AND AGENDA TOPICS FOR DISCUSSION

Chair Gegen noted the next meeting date is April 9, 2015.

Ms. Hayashi requested discussion and information on the access to Alexander Dam.

Chair Gegen requested keeping the Evslin property on the agenda, Lawai Kai, Kaha Kai, the spreadsheet, and Malama Koloa.

ADJOURNMENT

Chair Figaroa adjourned the meeting at 3:29 p.m.

Respectfully Submitted by:



Duke Nakamatsu, Commission Support Clerk

() Approved as circulated on

() Approved as amended on